

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MILES DAVIS,

Plaintiff,

v.

Case No. 19-13062
Honorable Linda V. Parker

ANTONIO ALVAREZ, et al.,

Defendants.

/

**OPINION AND ORDER ADOPTING MAGISTRATE JUDGE'S REPORT
AND RECOMMENDATION [ECF NO. 57]**

On October 17, 2019, Plaintiff Miles Davis filed this action under 42 U.S.C. § 1983 against Trinity Services Group (“Trinity”) and two of its employees, Antonio Alvarez and Jim Perry. (ECF No. 1.) Plaintiff alleges Defendants served him food that contained rocks and other foreign objects, which violated his Eighth Amendment right to be free from cruel and unusual punishment. (*Id.*)

On December 3, 2019, Davis moved for Trinity to provide Alvarez’s last known address to him or to the U.S. Marshal so that Alvarez could be served. (ECF No. 12.) The Court referred this matter to Magistrate Judge Elizabeth A. Stafford for all pretrial proceedings pursuant to 28 U.S.C. § 636(b)(1)(A)-(B). (ECF No. 13.)

On July 15, 2020, the Court adopted Magistrate Judge Stafford Report and Recommendation (“R&R”) (ECF No. 25), recommending that the Court deny Defendants’ Motion to Quash Service & Dismiss Complaint. (ECF No. 30.) The Court concurred with the R&R, which concluded that, since Plaintiff proceeds *in forma pauperis*, the more prudent course of action is to try to effectuate proper service as to Alvarez and Perry. (ECF No. 30 at Pg. ID 145.) On September 8, 2020, this Court adopted Magistrate Judge Stafford R&R (ECF No. 31), recommending granting Trinity’s Motion to Dismiss (ECF No. 15) and sua sponte dismissing the claims against Perry. (ECF No. 36.)

Presently before the Court, Magistrate Judge Stafford recommends in her March 3, 2022 R&R that the claim against Alvarez be dismissed without prejudice pursuant to Federal Rule of Civil Procedure 4(m). (ECF No. 57 at Pg ID 280.) In the R&R Magistrate Judge Stafford explains the history of the Court and the U.S. Marshal Services’ attempts to locate and serve Alvarez from December 2019 until February 2022. (*Id.* at 277-78.) The last noted efforts from the Marshal Service explained that Alvarez had perhaps experienced housing insecurity, addiction treatment, and that his whereabouts were unknown. (*Id.* at Pg ID 278-79 (citing ECF No. 56.))

Magistrate Judge Stafford noted that “[t]he Marshal Service here made not just reasonable but exhaustive efforts to locate and serve Alvarez.” (*Id.* at Pg ID

280.) However, despite these efforts, she concluded that Davis has no good cause for another extension of the service period where the Court and Marshal Service had attempted to locate Alvarez since 2019. (*Id.*)

At the conclusion of the R&R, Magistrate Judge Stafford informed the parties that they must file any objections to the R&R within fourteen days. (*Id.* at Pg. ID 281-82.) She further advised that, “[i]f a party fails to timely file specific objections, any further appeal is waived.” (*Id.* (citation omitted).) Neither party objected, and the time to do so has expired.

The Court reviewed the March 3, 2022 R&R and concurs with the conclusions reached by Magistrate Judge Stafford. Therefore, the Court adopts the R&R (ECF No. 57) and **DISMISSES WITHOUT PREJUDICE** Plaintiff's Complaint.

IT IS SO ORDERED.

s/ Linda V. Parker
LINDA V. PARKER
U.S. DISTRICT JUDGE

Dated: May 20, 2022

I hereby certify that a copy of the foregoing document was mailed to counsel of record and/or pro se parties on this date, May 20, 2022, by electronic and/or U.S. First Class mail.

s/Aaron Flanigan
Case Manager